

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTRADO COMMUNICATIONS, INC.,  Complainant, vs.  QWEST CORPORATION, d/b/a CENTURYLINK QC,  Respondent.	DOCKET NO. FCU-2014-0011
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**ORDER GRANTING MOTION TO WITHDRAW COMPLAINT,  
WITHOUT PREJUDICE, AND  
DENYING MOTION TO DISMISS AS MOOT**

(Issued October 20, 2014)

On June 9, 2014, Intrado Communications, Inc. (Intrado), filed with the Utilities Board (Board) a complaint against Qwest Corporation, d/b/a CenturyLink QC (CenturyLink), alleging multiple violations of Iowa Code chapter 476. Intrado alleged that CenturyLink was engaging in discriminatory and anticompetitive behavior with regard to CenturyLink's pricing of its automatic location identification (ALI) management services and selected routing (SR) features of Enhanced Universal Emergency Number Service (E911). Intrado asked that the complaint be docketed as an expedited proceeding pursuant to Iowa Code § 476.101(8).

The Polk County Joint E911 Service Board (Polk County) and the Black Hawk County E911 Service Board (Black Hawk County) were granted intervenor status on

July 3, 2014. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) represents the interests of consumers and the public generally in Iowa pursuant to its authority in Iowa Code § 475A.2(2).

Intrado, CenturyLink, Polk County, and Black Hawk County submitted pre-filed testimony. A hearing on this matter was held on August 20, 2014. Consumer Advocate did not file written testimony but participated in the hearing through cross examination of witnesses.

On September 16, 2014, Intrado filed a withdrawal of its complaint against CenturyLink, without prejudice. Intrado states that over the course of the complaint proceeding, Intrado has come to believe that it is in the best interest of the public safety community and the citizens of Iowa for Intrado to attempt to renew its partnership with CenturyLink for the delivery of ALI management services in Iowa. Intrado states that it has chosen to withdraw its complaint in a good faith effort to pursue a partnership with CenturyLink that will allow Intrado to continue its role in the delivery of ALI management services.

On September 16, 2014, Consumer Advocate filed an opposition to Intrado's withdrawal. Consumer Advocate states that the issues raised by Intrado extend beyond Intrado's interests and relate to the reliable provision of E911 services. Consumer Advocate argues that the withdrawal of Intrado's complaint without a settlement fails to address potential injury to competition in the ALI management marketplace. In addition, Consumer Advocate states that the dismissal of Intrado's

complaint without prejudice allows for the possibility that Intrado could file a renewed complaint against CenturyLink based on identical facts and circumstances should Intrado and CenturyLink fail to reach a new agreement. Consumer Advocate suggests that the Board reject the withdrawal of Intrado's complaint, or in the alternative, suspend this docket to allow time for Intrado and CenturyLink to reach a settlement. If the Board approves the withdrawal, Consumer Advocate suggests it do so with prejudice to prohibit the refiling of a similar complaint.

On September 17, 2014, intervenors Polk County and Black Hawk County filed a resistance to Intrado's withdrawal stating that because there is not an executed settlement between Intrado and CenturyLink, the public could be "at risk of damages from sudden and involuntary migration of citizen records and subsequent recommenced proceedings before the Board should the parties' reunification fail." The intervenors joined in Consumer Advocate's suggestion that the Board allow Intrado and CenturyLink time to reach a settlement or to approve the withdrawal with prejudice.

On September 22, 2014, Intrado filed a response to the Consumer Advocate's and the intervenors' resistances. Intrado restated its intent to withdraw its complaint against CenturyLink because Intrado and CenturyLink are discussing the possibility of partnering together in Iowa for the provision of E911 services. Intrado also rebuts Consumer Advocate's and the intervenors' public interest concerns by stating that

there is no evidentiary or other basis for concluding that the public safety is threatened by the fact that there is no settlement agreement in place.

Also on September 22, 2014, CenturyLink filed a response to Consumer Advocate's and the intervenors' oppositions. CenturyLink states that the basis of Intrado's complaint is CenturyLink's alleged discriminatory and anticompetitive pricing of its ALI management services, which has been identified as an information service by the FCC.<sup>1</sup> CenturyLink argues that the Board lacks subject matter jurisdiction over the retail rates charged by CenturyLink, including the structure of retail rates, for these services and cannot grant the relief requested by Intrado in its complaint. CenturyLink also argues that the Board does not have jurisdiction over the development and deployment of E911 services in Iowa. CenturyLink states that the public safety concerns identified by Consumer Advocate and the intervenors in their oppositions are not supported by the evidence presented at the hearing in this case, specifically the evidence that demonstrates CenturyLink's established capability to provide ALI database management services. CenturyLink asks that the Board accept Intrado's withdrawal of its complaint, with prejudice.

The Board has reviewed Intrado's notice of withdrawal, the oppositions filed by Consumer Advocate, Polk County, and Black Hawk County, as well as Intrado's and CenturyLink's responses and finds that a withdrawal of the complaint, without prejudice, is reasonable. In its notice of withdrawal, Intrado states that it is in the best interest of the public safety community and the citizens of Iowa for Intrado to attempt

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<sup>1</sup> *Bell Operating Companies*, 13 FCC Rcd. 2627 at ¶ 17 (1998).

to renew its partnership with CenturyLink for the delivery of ALI management services in Iowa. Intrado's decision to withdraw this complaint is demonstrative of a good-faith effort to pursue such a partnership. While Consumer Advocate and the intervenors argue that the Board should defer approving Intrado's withdrawal until a settlement is reached, the Board finds that the fact that there is no current settlement between CenturyLink and Intrado does not affect the withdrawal of this complaint. Intrado and CenturyLink assert, and the Board agrees, that there is no evidence in the record to support Consumer Advocate's and the intervenors' claims that the absence of a settlement agreement regarding the provision of ALI management services in this case is a threat to public safety. Moreover, it is not clear that the Board has the ability to extend this expedited proceeding beyond the extended statutory deadline.

Consumer Advocate, Polk County, and Black Hawk County expressed concern that granting Intrado's withdrawal without prejudice would allow Intrado to file a similar complaint based on identical facts if Intrado and CenturyLink are unable to reach a settlement, which would potentially be an inefficient use of judicial resources. However, the risk of refiling a complaint is not a sufficient reason to deny Intrado's withdrawal of this complaint. Intrado believes that by withdrawing this complaint, it will be able to negotiate more effectively with CenturyLink regarding a renewed partnership. None of the other participants in this proceeding has offered any information to the contrary. If Intrado decides at a later time to file a new complaint

against CenturyLink based on facts identical to those presented in this proceeding, the Board may take administrative notice of the record in this proceeding to minimize any duplication of efforts.

For these reasons, the Board will approve Intrado's withdrawal of its complaint, without prejudice, pursuant to 199 IAC 7.21.

On June 19, 2014, CenturyLink filed a motion to dismiss Intrado's complaint, asserting that the Board does not have subject matter jurisdiction over the complaint and that the complaint itself was insufficient to show a breach of legal duty or grounds for relief. CenturyLink stated that the primary focus of Intrado's complaint is that CenturyLink hindered Intrado's entry into the ALI management marketplace to provide ALI services to public safety answering points (PSAPs) in Iowa. CenturyLink argued that Intrado's intent to provide ALI management services to Iowa PSAPs is not within the Board's jurisdiction because ALI management has been determined to be an information service by the FCC and the provision of this database management service is not the provision of telecommunications service that is subject to the Board's regulatory authority. CenturyLink restated its position regarding the Board's lack of subject matter jurisdiction in this case in CenturyLink's response to Consumer Advocate's and the intervenors' oppositions to Intrado's withdrawal.

On August 12, 2014, the Board issued an order deferring a decision regarding CenturyLink's motion until after the evidentiary record in this case was completed.

Since the Board will approve Intrado's withdrawal of this complaint, CenturyLink's motion to dismiss is moot with respect to this proceeding. If Intrado refiles its complaint, CenturyLink may refile its motion.

**IT IS THEREFORE ORDERED:**

1. The withdrawal of this complaint filed by Intrado Communications, Inc., on September 16, 2014, is approved, without prejudice, pursuant to 199 IAC 7.21.
2. The motion to dismiss this complaint filed by Qwest Corporation, d/b/a CenturyLink QC, on June 19, 2014, is denied as moot.

**UTILITIES BOARD**

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad  
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of October 2014.